

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MALIBU MEDIA, LLC,)
)
Plaintiff,) Civil Action Case No. 5:19-CV-00834-DAE
)
v.)
)
JOHN DOE,)
)
Defendant.)
)

**PLAINTIFF'S OPPOSED MOTION FOR EXTENSION
OF DISCOVERY AND EXPERT DEADLINES**

Under Fed. R. Civ. P. 16(b)(4), Plaintiff, Malibu Media, LLC, moves for entry of an order extending the discovery deadline, and states:

1. This is a case for copyright infringement arising under United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.*
2. Plaintiff filed its initial Complaint on July 15, 2019 [CM/ECF 1].
3. On January 21, 2020, the Court entered a Scheduling Order setting a discovery deadline of October 20, 2020 [CM/ECF 25].
4. The parties thereafter submitted a Joint Motion to Modify the Scheduling Order, which was granted by this Court on April 14, 2020 [CM/ECF 30].
5. Since this time, the parties have worked diligently to serve and respond to discovery requests, schedule depositions, and engage experts. The parties are continuing to work through discovery issues and production of documents and have one deposition scheduled.
6. Due to several other ongoing cases, corresponding work, and circumstances surrounding to the appearance and progression of COVID-19 virus, Plaintiff requires additional

time to complete discovery and seeks and extension of expert deadlines.

7. Specifically, attorney, staff, and family members of Plaintiff's counsel's office and another law firm located in the same office space have been exposed to and/or have contracted COVID-19 at various times over the last several months during the pandemic causing delays and instances whereby prolonged quarantining was required. Likewise, members and employees of Plaintiff have been exposed to and/or contracted COVID-19 over the last several months during the pandemic causing delays and instances where prolonged quarantining was required.

8. The COVID-19 pandemic and the direct effects to counsel and Plaintiff have caused numerous disruption, delays and logistical issues such that completing discovery and retaining an expert timely under the schedule entered in January, prior to the pandemic, was impracticable under these circumstances of the COVID-19 pandemic.

9. Additionally, Chief District Judge Garcia of the Western District of Texas has issued numerous Orders and Supplemental Orders regarding court operations under the exigent circumstances created by the COVID-19 pandemic, which include a continuance of any civil jury trials scheduled to begin through October 31, 2020 (nearly seven (7) months of no jury trials and other protocols implemented due to the pandemic).

10. These factors have necessarily shifted the cases on the Court's calendar such that the relief requested herein should not otherwise delay the proceedings.

11. Further, on October 1, 2020, Defendant sought leave to modify the scheduling order and be granted leave to amend his answer and add potential counterclaims [CM/ECF 47].

12. The relief sought by Defendant necessarily demands that the discovery cutoff date be modified to allow Plaintiff additional time to engage in discovery on any newly-filed counterclaims.

13. The parties engaged in a discussion surrounding Defendant's request, to which Plaintiff did not object provided the expert deadlines and discovery cutoff deadline sought in this Motion were also adjusted.

14. Defendant refused to agree to the broader modification of the scheduling order or the extension of the expert deadlines and thus filed his motion as "Opposed" [CM/ECF 47].

15. Defendant submitted his expert designation and report on September 2, 2020.

16. Plaintiff is respectfully requesting that the Court modify the expert disclosure deadlines in the Court's January 21, 2020 scheduling order as amended in CM/ECF 30 to sixty (60) days before the close of discovery to allow for any issues with the expert's schedule and time needed to prepare his report for Plaintiff.

17. Plaintiff also respectfully requests an extension of the discovery deadline by one hundred twenty (120) days from the date of entry of an order on this Motion so that it can review any newly filed counterclaims and conduct discovery thereon.

18. This motion is made in good faith and not for the purpose of undue delay.

WHEREFORE, Plaintiff respectfully requests an extension of the discovery deadlines by one hundred twenty (120) days from the date of entry of an order on this motion and a modification of the expert deadlines such that all parties shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed. R. Civ. P. 26(a)(2)(b) by sixty (60) days prior to the close of discovery.

Dated: October 12, 2020

Respectfully submitted,

By: /s/ Paul S. Beik
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GOOD FAITH CERTIFICATION

Pursuant to Fed. R. Civ. P. 37(a)(1), Plaintiff hereby certifies that it attempted to confer through email and by phone with Defendant's counsel in a good faith effort to resolve the issues raised by this Motion. Defendant opposes the relief sought herein.

By: /s/ Paul S. Beik
PAUL S. BEIK

CERTIFICATE OF SERVICE

I hereby certify that, on October 12, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Paul S. Beik
PAUL S. BEIK